



7 March, 2019

Mr Michael Stiassny
Chair, NZTA

Via email

COMMERCIAL IN CONFIDENCE:

Unauthorised use of SkyPath Trust's intellectual property and project information

Dear Michael,

Thank you for your letter dated 6 March 2019.

I regret to advise you have been badly misinformed. NZTA knows SkyPath inside out.

Per the attached "AHB Pathway (Skypath)" memo tabled by NZTA at the March 2013 Kaipatiki Local Board meeting, you need to know that:

"NZTA has worked collaboratively with the [SkyPath] Trust, Auckland Transport, Architects, Engineers and the Auckland Council to investigate and agree a feasible engineering solution for a cycling and walking structure to be attached to the existing Harbour Bridge."

NZTA has participated in all of the design reviews and extensive option assessments for walking and cycling across the Harbour Bridge. NZTA's engineers Beca, have carried out detailed engineering studies on SkyPath and its effects on the AHB.

NZTA subsequently took SkyPath through its internal "project assurance and approval" processes, including NZTA's formal BUDMT and VAC approvals.

NZTA participated in SkyPath's resource consent, had access to all expert reports on every facet of SkyPath, and had its engineers provide expert evidence on SkyPath to the Environment Court.

It is completely incorrect to claim that NZTA has not been able to assess SkyPath.

However it is pleasing to read that NZTA are prepared to pay \$1.6 million for the SkyPath Trust's IP. This represents the liability for deferred fees owed by SkyPath Trust for the development of SkyPath's IP.

Please note that the \$1.6 million outstanding has been reduced by the Ministry for the Environment funding for design work received in 2013, and the circa \$600,000 NZTA paid to consultants in 2011 and 2012 to develop SkyPath.

A copy of the fees agreement with NZTA for the delivery of those services is attached.

The legal advice is clear (courtesy of Radio NZ):

Intellectual property lawyer Clive Elliott QC said it was reasonable for the Transport Agency to want to kick the tyres of the trust's design documents - but there were limits.

"If we are talking about a specific design then clearly the Transport Agency can't use that design without the trust's consent, and if that's what they're seeking to do, they've got to pay for it," Mr Elliott said.

Without the authorisation of SkyPath Trust, NZTA gave the SkyPath design to architects Monk Mackenzie to carry out a design review (which found no key issues) in late 2018.

NZTA has gone well beyond "kicking the tyres", it now needs to pay up.

Key points:

- SkyPath is a flagship project for the Government
- NZTA has been intimately involved in the development and design reviews to ensure SkyPath is an optimal solution for walking and cycling across the AHB
- SkyPath has been RMA consented and granted NLTP funding of \$67 million
- Throughout 2018 NZTA has been using SkyPath's IP without authorisation
- NZTA's reasons for refusing to acquire the SkyPath IP are misleading and risk causing delay for SkyPath
- Any other design options will require years of development, consultation and RMA consenting.

Minister Genter's recent advice is clear:

"A shared walking and cycling path across Auckland Harbour Bridge is a very important project for Auckland, it's a priority for this Government and we are committed to delivering it. I urge both parties to get back round the table to work out a mutually beneficial solution."

We reiterate our willingness to meet in order to find a mutually beneficial solution to this impasse so that Aucklanders can be walking and cycling across their Harbour Bridge in 2021.

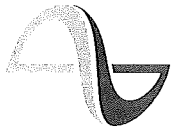
Yours faithfully,



Bevan Woodward
SkyPath Trustee and Project Director
bevan@skypath.org.nz
Mobile: 021 122 6040

CC: **Steve Mutton, NZTA**
Christine Rose, Chair, SkyPath Trust
Stephen Town, Auckland Council

Minister Twyford
Minister Genter
Councillor Chris Darby



Auckland Harbour Bridge Pathway (Skypath)

The Auckland Harbour Bridge (AHB) "clip-ons" recently underwent significant strengthening and the \$86 million project was successfully completed in 2010. Providing that freight loadings are appropriately managed on the AHB, as the city grows, the bridge has many decades of useful life as a strategic infrastructure asset for Auckland and the nation.

In addition to being one of the busiest stretches of State Highway 1 the AHB also accommodates critical city infrastructure such as water supply, telecommunications, electricity and natural gas.

The next Harbour Crossing is forecast to be required around 2030, subject to the actual level of freight loading growth. At this time freight and through traffic would transfer to the additional (new) harbour crossing while the existing AHB would revert to local commuter and public transport (bus) traffic.

The NZ Transport Agency (NZTA) has worked collaboratively with the Pathway Trust, Auckland Transport, Architects, Engineers and the Auckland Council to investigate and agree a feasible engineering solution for a cycling and walking structure to be attached to the existing Harbour Bridge. This has been achieved (see attached) and funded by the NZTA during 2011 and 2012. The proposed structure needs to be subjected to wind tunnel testing and this will be undertaken in 2013.

The project is being lead by the Pathway Trust and is now at a point where the Auckland Council is being requested to partly fund (and partly underwrite) the project.

NZTA regards this project as a community facility, to be paid for largely by an admission charge from the users. The pathway would be allowed to be attached to the Harbour Bridge structure through a license to occupy at peppercorn rental.

There is minor strengthening work still to complete on the AHB to support Skypath. Engineers are working to agree this detail and cost. Depending on the \$ amount required (currently in the range of \$1-3 million) the NZTA may be able to contribute towards these costs.

The structures required at the north and south ends of the bridge to connect from the ground to the Skypath are additional to the existing Skypath concept design.

The NZTA has no alternative plans for a walking and cycling facility across the AHB.

For more information on the Auckland Harbour Bridge:

Stephen Town
Regional Director
Auckland/Northland

Steve Mutton
Regional Asset Manager
Auckland/Northland

23 May 2011

Steve Mutton

NZ Transport Agency
Level 11, HSBC House,
1 Queen Street
Private Bag 106602
Auckland 1143

Dear Steve

AUCKLAND HARBOUR BRIDGE PATHWAY PROJECT – VIABILITY STUDY

It was a pleasure to meet with you and Stephen Town on Wednesday 18 May, to discuss this study. Thank you very much for involving us in this important investigation.

In outline, the Auckland Harbour Bridge Pathway Trust propose a walking and cycling pathway attached to the southbound box-girder clip-on of the Harbour Bridge. This concept has been designed by Copeland Associates Architects with Airey Consultants. NZTA has offered to engage our team in a study to determine overall viability of the concept, within the orbit of the new Technical Steering Group established by Auckland Council's Transport Committee.

As consultants, Copeland Associates and Airey look forward to working in close collaboration with NZTA's bridge engineers BECA, and understand that this study is to be completed within a two month time frame.

For feasibility work of this nature we charge fees on a time and expense basis, and enclose a schedule of charges for CAA and Airey personnel. We propose the appointment is in accordance with the New Zealand Institute of Architects standard form agreement, a copy of which is also enclosed. We are proceeding in anticipation of your acceptance and would appreciate your confirmation by return.

Once again, thank you for your instructions, we very much look forward to working with you on this exciting project.

With best wishes

Yours sincerely



Barry Copeland BA BArch RIBA NZIA
REGISTERED ARCHITECT
COPELAND ASSOCIATES Ltd

DIRECTOR

enc: schedule of charges
NZIA AAS General Terms and Conditions

cc: Roger Twiname
Bevan Woodward

Signed on behalf of the Client in confirmation of this Agreement

.....Date.....

SCHEDULE OF TIME CHARGES	<i>\$ per hour</i>
COPELAND ASSOCIATES ARCHITECTS	
Director	200
Senior Architect	135
Senior Graduate	100
Graduate Architectural assistant	80
Architectural Draughtsperson	60
Studio assistant	40
AIREY CONSULTANTS	
Director	200
Engineer	125
Senior Draughtsman	125

SCHEDULE OF NORMAL EXPENSES CHARGED AT COST

Travel and subsistence
study models)
presentations)
Photography)
plan printing
couriers

DISBURSEMENTS charged at cost +5%

secondary consultants
surveys/legal searches/etc
local authority fees and charges
special presentations

disbursements are individually agreed with client before expense is incurred

BUSINESS TERMS

billing is monthly or on completion of work stage, payment by client within 10 working days. Appointment in accordance with NZIA Agreement for Architect's Services Short Form AAS SF 2009

EX GST

1. Main Obligations – Architect and Client

- 1.a The Architect shall perform the Agreed Services required by this Agreement exercising the degree of skill, care and diligence normally expected of a competent Architect.
- 1.b The Architect undertakes to advise the Client of any matter that may affect the performance of the Agreed Services including circumstances or instructions of the Client that may require a variation of the service and a change to the Architect's Fee.
- 1.c The Architect agrees to appoint a representative to take instructions of the Client and act on behalf of the Architect for the performance of the Agreed Services.
- 1.d The Client agrees to provide the Architect with an adequate brief describing the Project and the objectives of the Client in relation to the Project together with information about the Site and conditions to enable the Agreed Services to be provided. The Client must declare or obtain ownership of any proprietary rights or intellectual property affecting this Project.

2. Payment of Fees

- 2.a The Client must pay the Architect the amount of fees and disbursements at the times and in the proportions outlined by the Agreement. Unless otherwise agreed payment of the Architect's account must be made within 10 working days of the date of the invoice. Where this Agreement has been entered into by an Agent (or a person purporting to be an Agent) on behalf of the Client, the Agent and the Client shall be jointly and severally liable for the payment of all fees due to the Architect under this Agreement.
- 2.b The Client cannot deduct any sum from amounts which must be paid to the Architect under this Agreement, except where the Client believes on reasonable grounds that the Architect has incorrectly charged or invoiced the Client.
- 2.c The Client cannot reduce or withhold payment to the Architect because a person not under the control of the Architect (e.g. Contractor or Separate Consultant) has not carried out their obligations to the Client.
- 2.d The Client must promptly notify the Architect of any dispute regarding fees, and give the Architect sufficient details to be able to respond. The Client must pay any amount not disputed on the due date.
- 2.e Notwithstanding any other provision in this Agreement, all disputes over fees shall be referred immediately to and Adjudicator for determination. If the parties cannot agree upon an Adjudicator within 2 working days of a dispute regarding fees being raised under clause d) above, then the Adjudicator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand. The process for the Adjudication will be determined by the Adjudicator, in consultation with the parties. The Adjudicator will deliver a determination on the dispute over fees within 15 Working Days of the appointment of the Adjudicator. The determination of the Adjudicator will be binding on the parties.
- 2.f If the Architect's account for such an amount as is not in dispute, remains unpaid 10 Working Days after becoming due for payment, the Architect is entitled to suspend services after a 5 Working Day notice period. If so, the Architect does not have to resume work until the amount owing and any costs incurred in relation to the suspension are paid in full. The Architect will not be liable to any party for losses arising from suspension of work.
- 2.g If the Client fails to pay the Architect's account on time, the Client must pay interest on the outstanding amount. The interest is to be calculated at a rate of 1.5% per month compounded

monthly during the period the amount is outstanding. In addition the Architect is entitled to recover all debt collection costs.

3. The Architect's Liability

- 3.a If the Architect breaches this Agreement the Architect will be liable to the Client for any reasonably foreseeable claim, damage, liability, loss or expense incurred by the Client caused directly by the breach.
- 3.b The extent of the Architect's liability under this Agreement is reduced proportionately to the extent that that Client and/or any other person, including any third party (whether under the law of contract, tort [including negligence], statute under the common law or otherwise), has contributed to the claim, damage, liability, loss or expense.
- 3.c Neither the Architect nor the Client shall be liable to the other for any loss or damage which has occurred as a result of any breach of this Agreement that is not notified in writing within 6 years of the date of this Agreement.
- 3.d In circumstances where the Core Services (as described and included in this Agreement) are reduced, limited or varied by later agreement or the Agreement is ended prior to the completion of the Agreed Services, the Architects liability is reduced accordingly and liability will attach only to those services actually performed and then only to the extent that the reduction of that part of the Core Services has not compromised or not denied the Architect the opportunity to correct the performed services or to otherwise mitigate the Client's loss.
- 3.e The Architect is not liable for any claim, damage, liability or loss or expense incurred by the Client as a consequence of any change that the Client or any other person makes to the Architect's Documents, or of any variation of the Contract Works from the Architect's Documents or the Project resource consent or the Project building consent without prior written approval by the Architect.
- 3.f The Architect shall not be liable to any person other than the Client, and disclaims responsibility, in tort or otherwise, for any claim, damage, liability, loss or expense incurred by such person. In the event that the project to which the Architect's services relate is leased, transferred, sold, or otherwise disposed of in part or whole by unit title to other persons, then the Client warrants that such persons shall be advised in writing that that architect accepts no responsibility in law to them. In the event of breach of this warranty, the Client, and the case of a company its directors, shall fully indemnify the Architect against any claim by such persons, whether such claim is in tort or otherwise.
- 3.g The maximum amount payable by the Architect, whether in contract, tort or otherwise, in relation to claims, damages and liabilities, losses or expenses arising from breaches of this Agreement is limited to \$250,000 or five times the Architect's fees for the Agreed Service, whichever is the lesser.
- 3.h The limitations of the Architects liability as described above do not apply where any legislation prevents them.

4. Insurance

- 4.a The Architect agrees to hold and maintain professional indemnity insurance for the duration of the Agreed Services and for a period of 6 years beyond completion of services for the indemnity amount of \$250,000.
- 4.b Should the Client require the Architect to obtain professional indemnity insurance for an amount greater than \$250,000 the Architect will endeavour to obtain the required additional indemnity amount, which will be to the Client's expense.

- 4.c Such increase in the indemnity will increase the Architect's maximum liability to the Client to the new indemnity amount.
- 4.d Should such insurance not become obtainable or if any material changes to the terms and conditions of cover occur, the Architect will accordingly advise the Client in writing.
- 4.e The Client must provide to the Architect evidence of the Separate Consultants' professional indemnity insurance.

5. Confidentiality

- 5.a Any information disclosed or materials conveyed by the Architect or the Client to the other are in the first instance to be considered privileged and confidential, whether so marked or not.
- 5.b Each party commits to maintaining confidentiality to the extent required by the other, in accordance with the needs of the Project at each stage of its development.
- 5.c Information shall cease to be confidential for Project purposes where it becomes publicly available through no fault of the Architect or the Client.

6. Intellectual Property Rights

- 6.a New intellectual materials include without limit studies, concepts, designs, drawings, specifications, models, photographs, electronic data, software and other materials collated, created or prepared by the Architect in carrying out the Agreed Services, but does not include pre-existing intellectual property owned by the Architect or the Client.
- 6.b The Architect owns all rights, including copyright, in all new intellectual property held in any medium.
 - 1) The materials prepared for the Project by the Architect shall remain the property of the Architect whether the Project is carried out or not.
 - 2) The Client is licensed to copy or use the materials for the purpose of the Project only, and not for any other purpose.
 - 3) The Client is not entitled to use such materials where any or all of the fees and disbursements payable to the Architect have not been paid in accordance with this Agreement.
- 6.c Where the Client wishes to use any part or all of such materials for any other project, and the Architect is not appointed to provide related services, the Architect is entitled to receive a royalty at an agreed rate for each re-use, such agreement not being unreasonably withheld.
- 6.d If the Client ends this Agreement during any identified stage of the Agreed Services, the license to copy or use only applies to those materials that are both already completed, and relate to previous stages of the Agreed Services.
- 6.e New intellectual property materials prepared for any partially completed stage cannot be copied or used by the Client unless the Architect first agrees in writing.

7. Resolving Disputes

Any disputes between the Client and the Architect in relation to this Agreement must first be attempted to be settled in good faith. Failing resolution the Client or the Architect may by notice require that the matter in dispute be referred to mediation. Note that this procedure does not apply to disputes regarding Fees – see Clause 2.e. If mediation is not commenced or settlement is not achieved within 30 working days of the notice requiring mediation the Client and the Architect may agree to refer the dispute to Arbitration or failing agreement, either party may refer the matters to the Courts for resolution.

8. Notice of Defects

If, during the term of this agreement or after completion of it, the Client becomes aware of any problem with the design, fault or defect in the Project, or non conformance with the Project's contract documents, the Client must promptly, but not later than 30 working days after becoming aware of it, notify the Architect about it in writing. If the Client does not do this the Client will be treated as having waived any claim the Client may have against the Architect (in contract, tort or otherwise) in relation to the problem, fault or non conformance.

9. Ending this Agreement

The Client or the Architect may end this Agreement by writing to the other at their last known address. This Agreement will end 20 Working Days after the date the notice is sent.

10. Health & Safety

The Architect has not and will not during the term of this Agreement or at any time after it assume any obligation as the Client's Agent or otherwise which may be imposed on the Client from time to time pursuant to the Health and Safety in Employment Act 1992 arising out of the engagement. The Architect and the Client agree that for the purpose of the said Act the Architect will not be the person who controls the place of work in terms of the said Act.

11. Meaning of Words

Arbitration: has the meaning defined by the Arbitration Act 1996.

Architect: the Practice.

Architects Fee: the amount or amounts declared in the Agreement as being payable by the Client to the Architect for the Agreed Services.

Agreed Services: the services to be provided by the Architect to the Client as disclosed in this Agreement.

Agreement: the agreement between the Client and the Architect consisting of this document and all attachments listed.

Brief: the statement assembled by the Client or the Architect to summarise the Client's expressed requirements, to address the Client's preferences and priorities, and to summarise the impact of context, environment, and prevailing legislation, at the time of signing the Agreement.

Client: the Person named as the Client in this Agreement.

Core Services: the Services described in bold text in Part A of this Agreement.

Project: the project identified in this Agreement.

Site: the land, building and other places made available by the Client to the Contractor where the Contract Works are to be carried out.

Working Day: any calendar day other than a Saturday, Sunday or a public holiday, or any day falling within the period from 24 December to 05 January, both inclusive.